THE HON'BLE SRI JUSTICE J. CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

W.P. No. 9801 of 2006

Dated: 26-06-2006

Between:-

Smt. Manju Bai w/o Rajan Singh, aged about 44 years, occ: Household, R/o H.No.13-1-571/A/3, Upper Dhoolpet, Hyderabad

…Petitioner

and

1. The Collector & District Magistrate, Hyderabad District, Hyderabad,
2. The Govt. of Andhra Pradesh, represented by its Chief Secretary to Government, Secretariat, Hyderabad.

…
Respondents

THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
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W.P. No. 9801 of 2006

O R D E R (Per Hon'ble Sri Justice D. Appa Rao)

The Collector & District Magistrate, Hyderabad District, the 1st respondent herein, passed an order, dated 02.05.2006, directing the detention of Sri Rajan Singh, the husband of the petitioner under Section 3 (2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, (for short 'the Act') alleging that the detenu was indulging acts of selling illicit liquor. Reference was made in four cases, which were registered against him. Assailing the said detention, his wife filed this writ of Habeas Corpus

The learned counsel for the detenu submits that while these cases were registered against the detenu with false allegations, there is no concrete evidence or material to suggest that he was indulged in activities of a bootlegger. He contends that the order was passed on extraneous material and the same was not supplied along with the grounds of detention so as to able to detenu to submit effective representation with the detaining authority, the Government of Andhra Pradesh as well as Advisory Board. He further elaborated by stating that the liquor said to have been seized was containing impurities like

higher alcohols, acids, aldehydes etc. was not made a mention nor the report of the Chief Physician of Osmania General Hospital who stated that it is injuries to health. Since the documents and materials relied upon in the order of detention form an integral part of the grounds and when the said documents and materials were not supplied to the detenu, his detention was illegal.

The detaining authority, the 1st respondent herein, filed counter stating that having satisfied from the material placed before him that the detenu has been indulging in the offences of possession, transportation and sale of I.D. liquor and acting in a manner prejudicial to the maintenance of public order and tranquility thereby causing danger to the public health, the order of detention was passed. He further stated that the opinion of the Chemical Examiner in regard to illicitly distilled liquor and their process of manufacture through unscientific methods and the opinion expressed by the Expert in the medical field about the affects of consumption of illicitly distilled liquor are indicated in the grounds of detention and it is for the detenu to establish that prejudice was caused to him for non-furnishing of the opinion of the Medical Expert. Therefore, the allegation that the order of detention was passed on extraneous material is incorrect. The order of detention was validly made.

The learned Advocate General submits that the detaining authority after elaborately considering the various cases registered against him and having satisfied that the detenu is habitual bootlegger and recourse to the ordinary criminal law did not deter from undertaking such activities rightly passed the impugned order.

From the various contentions urged by the learned counsel for the petitioner, we are of the view that, touching upon the non-furnishing of the material documents becomes relevant and central for disposal of

this writ petition.

It is undisputed fact that the detaining authority has taken cognizance of two reports issued by the Professors of Medicine and Chief Physician of Osmania General Hospital in arriving at the conclusion that it was unfit for human consumption. It is also not in dispute that these reports were not made available to the detenu. In fact, the 1st respondent himself admitted in his counter that it is for the detenu to establish that prejudice was caused to him for non-furnishing of the said reports.

The Supreme Court in a number of decisions starting from *Icchu Devi Choraria v. Union of India*[1] to the case of *Kamla Kanhaiyalal Khushalani v. State of Maharashtra*[2], opined that the documents and materials relied upon in the order of detention form an integral part of the grounds and must be supplied to the detenu pari passu the grounds of detention. If the documents and materials are supplied later, then the detenu is deprived of an opportunity of making an effective representation against the order of detention. Repeatedly the Supreme Court opined that the documents and materials relied upon in the grounds of detention should be supplied and non-supply would make the detenu thereby deprived of his constitutional right to make effective and expeditious representation and consequently detention order is void and liable to set aside.

The detenu herein was seriously handicapped in making an effective representation because the aforesaid documents, which were of vital importance, were not supplied to him. Since the documents and materials were not furnished to the detenu, the order of detention can no longer sustain. Therefore, the order of detention is set aside and the detenu shall be released forthwith.

The writ petition is allowed, and the order, dated 2.5.2006 in Rc. No. A/175/2006/ESD, is set aside. The petitioner shall be set at liberty

forthwith. No order as to costs.

J. CHELAMESWAR, J

D. APPA RAO,J

Dated: 26 -06-2006
Vp

Note:
CC by today
(B/o)
vp

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[1] (1980) 4 SCC 531

[2] AIR 1981 Supreme Court 814